Assembly Bill No. 1010

CHAPTER 688

An act to amend Section 130240 of the Public Utilities Code, and to amend Section 143 of the Streets and Highways Code, relating to transportation.

[Approved by Governor September 18, 2002. Filed with Secretary of State September 18, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1010, Correa. Transportation: franchise agreements.

(1) Existing law authorizes the Department of Transportation to enter into agreements with private entities for the construction by and lease to private entities of 4 transportation demonstration projects, including at least one in northern California and one in southern California. Existing law authorizes these private entities to charge tolls for the use of the privately constructed facilities. Existing law requires that any excess toll revenue be applied to any debt the entity incurred building the facilities to be paid into the State Highway Account in the State Transportation Fund. Existing law provides that the department may continue to charge tolls for use of these facilities after the lease held by the private entity has expired.

This bill would provide that the collection of tolls for the use of these facilities would terminate at the expiration of the franchise agreement. The bill would also delete the provisions specifying the location of the demonstration projects and would preclude the department from entering into a new agreement for these projects after January 1, 2003.

(2) Existing law authorizes the Orange County Transportation Authority to acquire, construct, develop, lease, or dispose of rights-of-way, rail lines, buslines, and other facilities necessary for transit purposes.

This bill would additionally authorize the authority with respect to the segment of State Highway Route 91 between Interstate Highway Route 15 and State Highway Route 55 only, to acquire streets, highways, bridges, tunnels, and connector roads necessary for transit or transportation purposes. The bill would require the department, if requested by the Orange County Transportation Authority, to approve the assignment of a franchise agreement between the department and the California Private Transportation Company for State Highway Route 91 to the Orange County Transportation Authority. The bill would provide that the authority shall not sell or assign its interest in the franchise agreement without approval of the Legislature by the enactment of a statute. The bill would authorize the authority to impose tolls on State Highway Route 91 to be used for specified purposes. The bill would specify that the authority's authorization to impose the toll would terminate upon its payment in full of certain bonded indebtedness or on December 31, 2030, whichever occurs earlier, and that the segment of State Highway Route 91 between Interstate Highway Route 15 and State Highway Route 55 would revert to the department at that time. The bill would provide that neither the state nor any other public agency is liable for any debt of the authority. The bill would create an advisory committee composed of 5 voting members each from the board of the Orange County Transportation Authority and the Riverside County Transportation Commission, and 3 nonvoting members from the San Bernardino Associated Governments and the department to review and make recommendations to the authority regarding the facilities acquired, tolls imposed, and the maintenance and operations of State Highway Route 91. The bill would make the exercise of the authority's powers in Riverside County subject to the approval of the Board of Supervisors of Riverside County and the Riverside County Transportation Commission and in consultation with the advisory committee. The bill would specify that all costs associated with the advisory committee would be paid by the Orange County Transportation Authority.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) It is essential for the economic well-being of the state and the maintenance of a high quality of life that the people of California have an efficient transportation system.

(b) The Department of Transportation (hereafter the department) is a party to a franchise agreement with the California Private Transportation Company, L.P. (CPTC), as authorized by Section 143 of the Streets and Highways Code, providing for privately financed transportation facilities within State Highway Route 91 (hereafter Route 91), with transportation facility development rights extending from Interstate 15 in Riverside County to the Los Angeles County and Orange County boundary. The completed facilities include two lanes in each direction for approximately 10 miles in the County of Orange. Tolls are imposed for use of the facilities to provide a revenue stream for the CPTC to finance the costs of construction and operation of the transportation facilities and to earn a profit consistent with the provisions of the franchise agreement. The franchise agreement extends to the year 2030 and includes provisions prohibiting improvements to Route 91 in order to protect the investment in the privately financed facilities (hereafter noncompete provisions).

(c) The County of Riverside is currently challenging the legality of the noncompete provisions in a legal proceeding against the department and the CPTC.

(d) Current congestion on Route 91 and projections for future vehicle traffic and transportation demand through this corridor make it imperative that Route 91 improvements be planned and constructed as soon as possible.

(e) The Orange County Transportation Authority (OCTA) has determined that acquisition of the CPTC interest in the franchise agreement is desirable and is the most appropriate means to eliminate the noncompete provisions of the franchise agreement. By replacing private control of the franchise agreement and bringing the transportation facilities under public ownership, OCTA will restore the authority to public agencies, including OCTA, the department, and the Riverside County Transportation Commission (hereafter RCTC), to make much needed improvements in the heavily congested Route 91 corridor and for OCTA to manage the transportation facilities to maximize throughput of vehicles and passengers rather than profits.

(f) The noncompete provisions shall be eliminated through the sale of CPTC's interest in the franchise agreement to the OCTA. This will facilitate the end of the litigation and enable planning and construction of critically needed transportation improvements to Route 91 through the Counties of Orange and Riverside.

(g) In pursuing the acquisition of the franchise agreement, OCTA undertook a rigorous valuation process that was comprised of three discrete elements. First, OCTA staff examined pertinent traffic and related revenue projections provided by CPTC and determined a value of the CPTC enterprise based on a discounted cashflow, a business valuation method in common use and believed to be most appropriate in this circumstance in the absence of other comparative business enterprises operating privately controlled toll lanes in public highways. This produced a valuation range between two hundred ten million dollars ($210,000,000) and two hundred fifteen million dollars ($215,000,000). Second, OCTA examined the cost to replace the transportation facility at today's construction costs. This produced a valuation estimate of two hundred million dollars ($200,000,000). Finally, OCTA engaged an outside accounting firm to prepare an independent third-party fairness opinion on the valuation process, which validated the OCTA valuation methods and produced a valuation estimate of the transportation facility in a range between two hundred two million dollars ($202,000,000) and two hundred twenty million dollars ($220,000,000).

(h) OCTA used the valuation range produced as a guideline in bilateral negotiations with CPTC to acquire the franchise agreement rights. A purchase price was negotiated with a value of two hundred seven million five hundred thousand dollars ($207,500,000). Based on this purchase price, OCTA has structured a financing plan that would have OCTA assume existing CPTC debt of one hundred thirty-five million dollars ($135,000,000), supplemented by an additional payment by OCTA to CPTC of seventy-two million five hundred thousand dollars ($72,500,000) in cash from existing reserves available to OCTA. As a result of the proposed transaction, OCTA will replace CPTC as the holder of the franchise agreement and the authority for CPTC to collect tolls will terminate.

(i) Current tolls should be reduced and to the extent feasible, the duration of the imposition of tolls should be minimized, but tolls shall be adequate to assure the payment of all financing required to acquire the facilities, and tolls shall be eliminated no later than the year 2030, consistent with the terms of the franchise agreement and Section 143 of the Streets and Highways Code.

SEC. 2. Section 130240 of the Public Utilities Code is amended to read:

130240. (a) "Transit" means as defined in Section 40005.

(b) (1) The Orange County Transportation Authority may acquire, construct, develop, lease, jointly develop, own, operate, maintain, control, use, jointly use, or dispose of rights-of-way, rail lines, monorails, guideways, buslines, stations, platforms, switches, yards, terminals, parking lots, air rights, land rights, development rights, entrances and exits, and any and all other facilities for, incidental to, necessary for, or convenient for transit service, including, but not limited to, facilities and structures physically or functionally related to transit service, within or partly without the county, underground, upon, or above the ground and under, upon or over public streets, highways, bridges, or other public ways or waterways, together with all physical structures necessary for, incidental to, or convenient for the access of persons and vehicles thereto, and may acquire, lease, sell, or otherwise contract with respect to any interest in or rights to the use or joint use of any or all of the foregoing. However, installations on state freeways are subject to the approval of the Department of Transportation and installations in other state highways are subject to Article 2 (commencing with Section 670) of Chapter 3 of Division 1 of the Streets and Highways Code.

(2) With respect to the segment of State Highway Route 91 between Interstate Highway Route 15 and State Highway Route 55 only, the Orange County Transportation Authority may exercise all of the powers contained in paragraph (1) that apply to streets, highways, bridges, and connector roads.

(3) The exercise of the powers provided to the Orange County Transportation Authority in paragraph (2) is subject to approval by the Board of Supervisors of Riverside County and the Riverside County Transportation Commission and in consultation with the advisory committee described in paragraph (1) of subdivision (h) as it relates to the use of those powers in Riverside County under the terms of the franchise agreement described in subdivision (c).

(c) If the Orange County Transportation Authority requests, the department shall approve the assignment to the Orange County Transportation Authority of the Amended and Restated Development Franchise Agreement, as amended, between the department and the California Private Transportation Company, L.P. (CPTC) for the State Highway Route 91 median improvements as authorized by Section 143 of the Streets and Highways Code, subject to the requirement that subdivisions (a) to (f), inclusive, of Section 2 of Article 3 of the restated franchise agreement be deleted in their entirety in the event that CPTC and the authority agree to the assignment of all of CPTC's interests in the franchise agreement to the authority.

(d) The Orange County Transportation Authority shall have the authority to impose tolls for use of the State Highway Route 91 facilities as authorized by the franchise agreement. After the bonds issued pursuant to subdivision (f) are paid in their entirety or on December 31, 2030, whichever occurs earlier, the Orange County Transportation Authority shall have no further authority to impose or to collect a toll for the use of the segment of State Highway Route 91 between Interstate Highway Route 15 and State Highway Route 55.

(e) Toll revenues from the use of State Highway Route 91 facilities between Interstate Highway Route 15 and State Highway Route 55 shall only be used by the Orange County Transportation Authority for capital and operating expenses, including payment of purchase costs, debt service, and satisfaction of other covenants and obligations relating to indebtedness, and for transportation related to State Highway Route 91 between Interstate Highway Route 15 and State Highway Route 55, excluding other toll roads. Prior to July 1, 2003, the Orange County Transportation Authority, in consultation with the department and the Riverside County Transportation Commission, shall issue a plan and a proposed completion schedule for the improvements on State Highway Route 91 between Interstate Highway Route 15 and State Highway

Route 55. The Orange County Transportation Authority shall update the plan on an annual basis until all improvements described in the plan have been completed.

(f) The Orange County Transportation Authority may incur indebtedness and obligations, and may issue bonds, refund bonds, and assume existing bonds for purposes authorized by this section for a period not to extend beyond the year 2030. Indebtedness and bonds issued under this section do not constitute a debt or liability of the state or any other public agency, other than the authority, or a pledge of the faith and credit of the state or any other public agency, other than the authority. Bonds issued under this section shall not be deemed to constitute a debt or liability of the state or any political subdivision thereof, other than the bank and the authority, or a pledge of the faith and credit of the state or of any political subdivision, but shall be payable solely from the revenues and assets pledged to the repayment of the bonds. All bonds issued under this section shall contain on the face of the bond a statement to the same effect.

(g) Notwithstanding Section 143 of the Streets and Highways Code, the State Highway Route 91 facility constructed and operated under the authority of a franchise agreement approved pursuant to that section shall revert to the state at the expiration of the lease or termination of the franchise agreement at no cost to the state.

(h) (1) An advisory committee shall be created to review issues and make recommendations to the Orange County Transportation Authority regarding the transportation facilities acquired from CPTC, including tolls imposed, operations, maintenance, and use of toll revenues, and improvements in the area of State Highway Route 91 between Interstate Highway Route 15 and State Highway Route 55, including the identification and siting of alternative highways. The committee shall consist of 10 voting members and three nonvoting members, as follows:

(A) Five members of the board of directors of the Orange County Transportation Authority appointed by that board.

(B) Five members of the Riverside County Transportation Commission appointed by that commission.

(C) One member of the San Bernardino Associated Governments appointed by that body and the district directors of Districts 8 and 12 of the Department of Transportation, all of whom shall be nonvoting members.

(2) When reviewing the initial toll structure proposed by the Orange County Transportation Authority or any changes to the toll structure, the advisory committee shall place an information item on a regularly scheduled agenda for due public comment and consideration of the advisory committee.

(3) The Orange County Transportation Authority shall conduct an audit on an annual basis of the toll revenues collected and expenditures made during the term of franchise agreement. The audit shall review revenues and expenditures for consistency with the provisions of this section and shall be provided to the advisory committee.

(4) The Orange County Transportation Authority shall pay all costs associated with the requirements of this subdivision.

(i) The Orange County Transportation Authority shall not impose tolls for the use of nor construct and operate State Highway Route 91 facilities in the County of Riverside without prior approval by the Board of Supervisors of the County of Riverside, the Riverside County Transportation Commission, and the advisory committee.

(j) The Orange County Transportation Authority shall not sell or assign its interest in the franchise agreement without approval by the Legislature by enactment of a statute provided that approval shall not be required in connection with granting rights and remedies to lenders under Article 16 of the restated franchise agreement.

(k) After the bonds issued pursuant to this section are paid off in their entirety, or on December 31, 2030, whichever occurs earlier, that segment of State Highway Route 91 between Interstate Highway Route 15 and State Highway Route 55 shall revert to the department.

(*l*) In the event that the Orange County Transportation Authority decides to sell or assign its interest in the franchise agreement, the Orange County Transportation Authority shall provide written notice at least 90 days in advance of the date they submit their request for approval by the department pursuant to this subdivision. The written notice shall be provided to the advisory committee and the Riverside County Transportation Commission.

SEC. 3. Section 143 of the Streets and Highways Code is amended to read:

143. (a) The department may solicit proposals and enter into agreements with private entities, or consortia thereof, for the construction by, and lease to, private entities of two public transportation demonstration projects. The department shall not enter into an agreement for any new proposals under this authority after January 1, 2003.

(b) For the purpose of facilitating those projects, the agreements may include provisions for the lease of rights-of-way in, and airspace over or under, state highways, for the granting of necessary easements, and for the issuance of permits or other authorizations to enable the private entity to construct transportation facilities supplemental to existing state-owned transportation facilities. Facilities constructed by a private entity pursuant to this section shall, at all times, be owned by the state.

The agreement shall provide for the lease of those facilities to the private entity for up to 35 years. In consideration therefor, the agreement shall provide for complete reversion of the privately constructed facility to the state at the expiration of the lease at no charge to the state.

(c) The department may exercise any power possessed by it with respect to the development and construction of state transportation projects to facilitate the development and construction of transportation projects pursuant to this section. Agreements for maintenance and police services entered into pursuant to this section shall provide for full reimbursement for services rendered by the department or other state agencies. The department may provide services for which it is reimbursed with respect to preliminary planning, environmental certification, and preliminary design of the demonstration projects.

(d) (1) Agreements entered into pursuant to this section shall authorize the private entity to impose tolls for use of a facility constructed by it, and shall require that over the term of the lease the toll revenues be applied to payment of the private entity's capital outlay costs for the project, the costs associated with operations, toll collection, administration of the facility, reimbursement to the state for the costs of maintenance and police services, and a reasonable return on investment to the private entity. The agreement shall require that any excess toll revenue either be applied to any indebtedness incurred by the private entity with respect to the project or be paid into the State Highway Account, or both.

(2) The authority to collect tolls for the use of these facilities shall terminate at the expiration of the franchise agreement.

(e) The plans and specifications for each project constructed pursuant to this section shall comply with the department's standards for state transportation projects. A facility constructed by and leased to a private entity shall, during the term of the lease, be deemed to be a part of the state highway system for purposes of identification, maintenance, enforcement of traffic laws, and for the purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code.

(f) The assignment authorized by subdivision (c) of Section 130240 of the Public Utilities Code is consistent with this section.

SEC. 4. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

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